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HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

Reference: Operation E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 22 MAY, 2018

AT 10.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Come forward Mr Watson. Thank you. Mr Walker. Thank you. Just a couple of things I wanted to take up with you before others ask any questions. You were asked about the search that took place on the 20th when you weren't on duty. What's the procedure when a drug is found within the cell? I mean, what happens to it?---It should be on video camera.

10

Right.---When it's done, placed into an evidence bag and sealed in the sight of the inmate.

Right.---It's in the cell with the inmates, the evidence bag is the same as the police bags, name, date, finding officer and the signature and sealed and if the inmate is there, he'll sign it, we'll get him to sign it as well.

And then what happens?---It's placed with the report and then it's taken down to the manager of security.

20

Is it ever tested?---Corrective Services don't test, they normally send them away I believe.

They send them away.---If, if, if it's to be tested, it's sent away.

Are they routinely tested?---Not that I know of.

Do you know why that's so?---No, I don't know.

30

Are the police contacted at all?---I believe they would be but not all the time, the buprenorphine, the drug is legal on the outside, so therefore, and it's prescription medication.

Yes, okay.---So therefore I don't think it's a great interest to test it.

And, I mean, a prisoner can face internal charges. Is that right?---That is correct.

40

Is that the path or the course when a drug is found?---Yeah, he should be charged immediately and that, then whatever punishment is administered there which is normally cancellation of visits and privileges.

All right. I mean, the evidence will show this at some stage, but I've got the impression that in respect of Mr [REDACTED] he wasn't charged internally.---He should've been. If there's two inmates in a cell it's rather hard to place ownership because they both deny it but unless one actually makes an admission that it's his, it's rather hard to prove.

Okay. But if an admission is made, they generally will face an internal charge?---Yes they will.

All right. And just one other matter, did anyone contact you overnight about the evidence you've been giving?---No. Only support from friends.

Good on you. Okay, thank you. We should swear you in again if you don't mind, and you take an oath don't you, I think? Yes, thank you.

MR TAYLOR: Commissioner, can you confirm on the record the 38 declaration?

THE COMMISSIONER: Yes. The section 38 declaration that I made yesterday continues.

10

THE SECTION 38 DECLARATION MADE YESTERDAY CONTINUES.

MR TAYLOR: Thank you.

THE COMMISSIONER: Now, Mr Madden, are you here today? He's not here yet, is he? He was here, was he?

20 MR WILLIS: He was, Commissioner.

THE COMMISSIONER: Right. Mr Willis, are you in a position to ask whatever questions you want to ask? Sorry, Mr Duggan, I'm not sure whether you wanted to ask - - -

MR DUGGAN: Yes. Now might be a time to jump up, Commissioner. I did want to ask a couple of extra questions that I've considered overnight.

30 THE COMMISSIONER: All right.

MR DUGGAN: Before I do that can I tender a couple of transcripts that I referred to yesterday?

THE COMMISSIONER: Yes.

MR DUGGAN: They are the transcripts of Mr Walker's record of interview with ICAC from 9 August, 2017.

40 THE COMMISSIONER: That will be marked Exhibit 54.

#EXH-054 – TRANSCRIPT OF RECORD OF INTERVIEW BETWEEN PAUL GRAINGER & TERRENCE WALKER HELD ON 9 AUGUST 2017

MR DUGGAN: Yes. And I'll also tender the compulsory examination that Mr Walker gave on 9 March, 2018.

THE COMMISSIONER: That will be Exhibit 55.

**#EXH-055 – TRANSCRIPT OF OP ESTRY COMPULSORY
EXAMINATION OF TERRENCE WALKER HELD ON 9 MARCH
2018**

10 MR DUGGAN: Commissioner, can I indicate that there's currently a
section 112 order in relation to the compulsory examination. I don't seek
for that to be lifted at the moment in relation to the whole of the transcript.

THE COMMISSIONER: Right.

MR DUGGAN: I want to ask a couple of questions about it, but perhaps the
direction can be lifted at some point, but I've just raised the issue with Mr
Taylor and he might want some redactions made to the transcript and he
hasn't had a chance to consider that. That also applies in relation to the
20 record of interview. I'm not sure whether the best - - -

THE COMMISSIONER: Well, why don't I do this. I'll continue the
section 112 direction except to the extent that you refer to matters as we
proceed.

**VARIATION OF SUPPRESSION ORDER: THE SECTION 112
DIRECTION CONTINUES EXCEPT TO THE EXTENT THAT
MATTERS ARE REFERRED TO AS THE HEARING PROCEEDS.**

30

MR DUGGAN: Thank you, Commissioner.

THE COMMISSIONER: We'll proceed on that basis. Is that okay with
you, Mr Taylor?

MR TAYLOR: Yes, that should be satisfactory, thank you.

THE COMMISSIONER: And if a problem arises, just let me know.

40

MR TAYLOR: Will do.

MR DUNNE: Commissioner, my name is Dunne. I appear for Mr
McMurtrie.

THE COMMISSIONER: Yes.

MR DUNNE: Just so I'm clear on what the effect of the orders the Commissioner's just made, the suppression order remains on the record of compulsory examination?

THE COMMISSIONER: Yes.

MR DUNNE: And yet that was made available for the parties to read and to ask, presumably to ask questions at today's hearing.

10 THE COMMISSIONER: Yes.

MR DUNNE: If the suppression order remains, does that not cause an issue with questions being asked?

THE COMMISSIONER: That's why with Mr Duggan I varied the order to that extent. I'm happy to do it with other counsel or solicitors as we go along until Mr Taylor's had a chance to raise whatever concerns he has. Now, it may be at the end of the day that Mr Taylor has none, but he can indicate as we go along, if there is a particular matter that's raised that he's
20 concerned about, then we'll deal with it then. But you can all assume that when you ask questions I'll indicate that the section 112 order is varied to the extent that you raise matters in it.

MR DUNNE: Thank you, Commissioner.

THE COMMISSIONER: Is that okay?

MR DUNNE: Thank you, Commissioner.

30 THE COMMISSIONER: All right. Mr Brasch, were you able to get instructions overnight in relation to those photographs?

MR BRASCH: Yes, Commissioner. This is in relation to Exhibit 51.

THE COMMISSIONER: Yes.

MR BRASCH: There's two photographs only, which are photographs 13 and 14 which depict private office areas which inmates would not ordinarily have access to.

40 THE COMMISSIONER: Yes.

MR BRASCH: And in particular also photograph 14, which is the IAT room, which also has material on a whiteboard which can't be read from the document itself but could in other circumstances maybe be able to be read and it may have material there which are operational matters or the like. So we would ask for section 112 order or direction in relation to photographs 13 and 14 of Exhibit 51.

THE COMMISSIONER: What do you say, Mr Duggan?

MR DUGGAN: Commissioner, in relation to page 14, that is a locked room, inmates aren't allowed any access, and in my submission there's no great public interest need for it to be made public or for people to understand what's happening in this inquiry, so I don't oppose the order sought by Mr Brasch.

10 THE COMMISSIONER: Thank you. 13?

MR DUGGAN: 13 is not as obvious because there's no whiteboard and there's no materials that can be blow up, but again there's no great public interest need for that to be seen.

THE COMMISSIONER: All right. I have to be satisfied that it's contrary to the public interest, don't I?

20 MR DUGGAN: Yes, that's right. It doesn't seem to me to be a photograph which needs to be suppressed in the public interest, page 13. Page 14, yes.

THE COMMISSIONER: Might we have 13 on the screen, is that possible? It'll be in the exhibits, won't it?

MR DUGGAN: Yes. It's Exhibit 51. So page 13, Commissioner, that's an area that inmates do not have access to obviously. Potentially there's a security risk of someone seeing that layout, but there doesn't seem to be any material lying around or any intel that might be able to be picked up.

30 THE COMMISSIONER: That's the executive staff office, isn't it?

MR DUGGAN: Yes. It's the room, the officer's room above Unit 5 and it's adjacent to the IAT office which is at page 14.

THE COMMISSIONER: Mr Brasch, I must say that in relation to that paragraph 14, I agree with you, but in relation to 13, what's the real risk that arises as a result of that?

40 MR BRASCH: The only further matter I can put, Commissioner, is that there is a whiteboard in that picture as well which appears to have writing on it. It is not as distinct as the other one but it's in the right side of the photograph.

THE COMMISSIONER: But as I understand it, what will be released is a paper copy. Is that right, Mr Duggan?

MR DUGGAN: It's uploaded onto the website as a PDF, I assume. It can be redacted, the whiteboard can be redacted.

THE COMMISSIONER: Why don't we do that and then that will allay your concerns.

MR BRASCH: Thank you, Commissioner.

THE COMMISSIONER: So, and when is it proposed to be uploaded onto the website?

10 MR DUGGAN: Overnight, today.

THE COMMISSIONER: In that case I'll just make an order in respect of 14, will I, at this stage? There's not going to be a dispute.

MR DUGGAN: Thank you, Commissioner.

THE COMMISSIONER: Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988, that page 14 of
20 Exhibit 51 will not be published or communicated except by Commission officers in the exercise of their statutory duty.

**BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988, THAT PAGE 14 OF EXHIBIT 51 WILL NOT BE PUBLISHED OR COMMUNICATED EXCEPT BY COMMISSION OFFICERS IN THE EXERCISE OF THEIR
30 STATUTORY DUTY.**

THE COMMISSIONER: I think that's sufficient, isn't it?

MR DUGGAN: Yes.

THE COMMISSIONER: Yes. Thank you.

40 MR DUGGAN: Mr Walker, if I can just ask you a few more questions. If you could be shown, please, your hearing transcript from yesterday at page 38, we might bring that up on the screen. If you need a hard copy, please ask. And so it's about half way down, or about a third of the way down the page. Do you see the line, "So he was taken across the day room." Do you see that?---Yes.

So you may recall yesterday I was asking you about the period just after you had come out of the cell, and you agreed that he'd been, the inmate had been taken off to a day room on the other side, and the transcript continues, "And

what about Governor O'Shea and Mr Taylor and Mr Peebles and Mr Kennedy? Did you see them at any point?" Your answer was, "I believe once we came out of the cell they had all left the area". Can you see that? And then I say, "All right. So you went into the cell. Did you see them or were you aware where they were at any point after that?" And you said, "No. We had no, none at all, no vision." So that suggests you didn't see them. And then I go on, "And just to be clear, do you say that they came out into the day room at some point after the instruction was issued, did they stay in the office, or", and you said, "I couldn't tell you, I believe they were in the day, in the office but when I turned and walked to the cell they were in the office area." I just want to take you now to your compulsory examination. Do you recall giving evidence in a private hearing on 9 March this year?---(No Audible Reply)

Sorry, you'll just need to say yes for the transcript.---Sorry, yes.

Thank you. If I can take you to page 501 of that. And the passage I want to take you to is just above line 20 there. You're being asked about the same period and at the top of the page you might see a reference to the inmate being taken diagonally across to an empty cell, and then at line 19 you were asked, "So once both prisoners were out of the cell, what was the next thing you did?" And you said, "I think they'd both been secured in cell and I went up, I think I went and saw the boss, Mr Taylor." "You went and saw Mr Taylor and was Mr Taylor still in the office or where was he at that stage?" And you didn't recall. "And when you went to speak to Mr Taylor, was Mr O'Shea there?" And you say, "I think they had just left." "And when you say they, was that the three of them, Mr Taylor, Mr Peebles and Mr Kennedy?" All right. And you say, "I sort of have a little bit of recognition, I think Mr Kennedy may have gone earlier but I'm not sure." And then you were asked, "And so did you see them walking off as you were coming back to speak to Mr Taylor?" And you answered, "Yeah. They were just heading down the hallway." Now I've taken you to that evidence, was that evidence correct when you gave it?---I believe that was correct when I gave it.

That was your recollection?---That was my recollection at the time.

And when you're talking about the officers walking down the hallway, which hallway were you referring to there?---Ah, the, that would have been the hallway down the centre of the units between the two units.

So is that, that's not the day room?---No.

And it's a hallway leading away from the officers' station, is it?---Yes.

And at what point do you say that you saw them or who do you recall seeing walking down the hallway?---I don't clearly recall seeing anyone.

All right. But you - - -?---I believed at the time I think I saw Mr Kennedy um, Mr O'Shea and Mr Peebles, but yeah, my recollection of that is not real good.

All right. And just so we can orientate ourselves in terms of time, at which point of time was this by reference?---At the time the inmate had been secured in the other cell and we moved to the day room, the office.

10 So you came out of the cell after composing yourself?---Yes.

And you walked through the day room I assume?---Yes.

Did you walk straight to the office?---I can't be sure.

All right. How long after you walked out of the cell composing yourself do you think you might have seen Mr O'Shea and Mr Peebles?---Probably a minute or two.

20 All right. And do you have any recollection as to how close they were to the officers' station there?---I think they were down about the middle of the area exiting the unit.

All right. And is that five metres, 10 metres?---30, 25 metres.

All right. And they were walking away from the officers' station, were they?---Yes.

30 All right. If I can just take you now to some more evidence you gave yesterday. This is at page 47. It should be about line, just above line 40 there. I asked you, "Is there any reason you're aware of as to why a drug search was chosen as the reason?" And you answered, "No." Do you recall the context of that evidence?---Yeah, I recall the evidence. I don't know why they did that.

All right. Can I take you now to your compulsory examination at page 522. Now, about line 40, do you see the words, "The Commissioner"?---Yes.

40 So the Chief Commissioner there, I think it was, was asking you some questions and he said, "Can I just get the sequence right? Before when you said you and the others went in with your handwritten statements and then colluded to produce the other IRM report, we are now talking about a telephone conversation that you had with McMurtrie. Which comes first?" And you said, "McMurtrie's conversation was the one I had when I rang him and said, "What do you want written in this?" And he basically said, "Work on this, on this part of it, throw that in and just make it look like he just fell." "No, but was that telephone call you're just talking about now, the one that led to the creation of this document, the one that you've just been asked questions about?" And you say, "Yes". "Which talks about a drug

search, etcetera?” “Yeah, that's right, sir.” And then this is the part I want to take you to, “So that came first, and then later you walk in with your statements and then sat down and he types out?”, and you answer, “This was written with advice of Mr McMurtrie. He said put him down that he had that and as it said there, that he had a large amount of buprenorphine tablets, which he told me, quote, “Put that in there”, he said, “He’s got a drug history”, he said, “And this will fix it up.”” Do you recall giving that evidence?---No, I don’t.

10 Is that evidence correct?---Yes. That is correct.

So you recall that conversation with Mr McMurtrie in which he stated to you that - - - ?---It was a drug search.

He had a drug history, and that’s why it was put in there.---I believe that is close to what was said, I couldn't remember the exact words.

But you have a recollection that - - - ?---Yes, I do.

20 - - - that was the substance of it.---Yes, it was.

Thank you. And one last topic. You gave evidence yesterday at page 67 of the transcript, and I can read it out to you while it’s being pulled up and then others can see it. You were asked, “And did you have a discussion with anyone about the fact there were no still photos?” Do you remember I was asking you about the IRM and there’s a reference to still photos?---Yes.

30 And you said, “No”, meaning you didn't have a recollection as to any discussion about that. Can I take you please to page 516 of your compulsory examination? And this starts at about line 35 where it says, “Thank you. Now, this next bit”, do you see that?---Yes.

40 So it goes on to say, “If not fully recorded on camera, were photos of inmates taken?” And we’ve got, “Yes, still photos as part of standard centre procedure”, that’s what we were talking about a moment ago. You answered, “Were photographs taken?” “Not to my knowledge. I think that was collusion between Peebles and McMurtrie at the time.” “To include that, or?” You answered, “They just wrote it in there.” “All right.” “Because I actually questioned them on that at the time and said, ‘Well, where are these photos?’” “And what did Mr –”, “Because I was concerned I was going to be sunk for it all, and he said, ‘No no, it’s all right.’ He said, ‘We’ll just tell them we won’t be able to find them or that they didn't record on the disc.’ He said, ‘We’ll sort that out later because’” – and then you were asked, “And that was Mr Peebles who said that to you?” “That was McMurtrie I believe because McMurtrie also told me later, because I said to him, ‘This is going to blow up and I'm the one who is going to get sunk.’ A fairly heated discussion I had with him, and he said to me, ‘Oh it’s all right, mate, don’t worry about it’, he said, ‘They’re not going to get the footage

from the day room either.” “Do you remember where that conversation took place?” And you said, “I believe in McMurtrie’s office.” Do you stand by that evidence?---I do.

And the conversation that you had with Mr McMurtrie in relation to the still photos, you say, do you, that he said, “We’ll just tell them we won’t be able to find them or didn’t record on the disc.”?---Yes.

10 And your recollection is that that occurred, that conversation occurred in Mr McMurtrie’s office?---That’s my recollection.

Thank you, Commissioner, I have no - - -

THE COMMISSIONER: I’ve just got a couple arising from the transcript itself before we proceed. Might we just have page 502 of the compulsory examination on the screen, thank you. And you were being asked questions here about being requested to go and sort it out. And can I just direct your attention to the questions and answers at about line 22. You were asked this question, “And what was your understanding of ‘sort it out.’?” And you
20 said, “The boss wanted me to go down and teach him a lesson. He wasn’t, he wasn’t happy with what had gone on.” Is the reference to the boss there Mr O’Shea?---Yes.

And do you stand by that evidence?---I do.

And then you were asked, “Well, and teach him a lesson, does that mean some form of physical contact?” And you answered, “I believe so. At the time that was what I believe my direction was to go and do.” And do you stand by that evidence?---I do.
30

And then a little later at line 42, Ms Clifton asked you this question. She said, “Thank you. And that understanding to ‘sort it out’ was to go in and perhaps do something a bit physical with the prisoner, teach him a lesson?” And you said, “That was exactly it.” Do you stand by that evidence?
---I do.

You were then asked this question, “That was it. Yes. And that understanding, had that come from being given the instruction previously?” And you said, “It has.”---Yes.
40

And you stand by that evidence?---I do.

And if we go over the page to 503 you were asked this question, “And was that instruction that had been given to you previously, who gave that to you?” And you said, “Mr O’Shea.” You were then asked, or it was put to you, “Mr O’Shea?” And you then said, “And Mr Peebles.” “And Mr Peebles. So would it be fair to say that they used you as a person to go and

sort out prisoners?" And you said, "That's correct." Do you stand by that evidence?---I do.

It suggests that on previous occasions you had been instructed to do what in fact you did in relation to Mr [REDACTED] Do you agree?---I agree.

10 Can you remember particular occasions when you were ask to go and sort out a prisoner?---Not clearly particular occasions, Your Honour, but take my word for it, I have done that sort of thing for them on previous occasions.

Was it a frequent occurrence?---Not a lot, no.

Not a lot. But more than one occasion?---More than one occasion.

Would it be more than 10 occasions?---I don't think so.

All right. Something between one and 10.---Possibly, yes.

20 All right. Yes, thank you.

Now, Mr Madden, you - - -

MR MADDEN: I'm sorry I wasn't here, Commissioner, I left something in my office - - -

THE COMMISSIONER: That's okay.

30 MR MADDEN: - - - and I was out ringing my long-suffering secretary and asking her to run up here with it so, which she did.

THE COMMISSIONER: No need to apologise. But you have been authorised to appear for Mr Peebles. Can I take it you're ready to proceed to ask any questions you want to ask?

MR MADDEN: As ready as I'll ever be, Commissioner, yeah.

THE COMMISSIONER: Thank you

40 MR MADDEN: Mr Walker, you've given a number of accounts over years about what you say happened in relation to the prisoner [REDACTED] Is that right?---I have.

And then at some stage you changed your version. When you gave evidence here at the compulsory examination you changed your version somewhat but not completely. Is that right?---That would be correct.

And did you speak to Commission officers, can you hear me all right?

---Yes, I can hear you.

Did you speak to Commission officers before you gave evidence here at the compulsory examination?---I don't understand.

At any time?---I don't understand.

Well, officers from this Commission, ICAC officers, ICAC investigators.
How many times have you spoken to them?---Only at the investigation and
10 when I came to ICAC.

All right. So when did you come to ICAC?---When I came for the hearing,
the compulsory hearing.

Did you speak to any ICAC investigators before then?---I don't believe so.

Can you just bear with me for one moment? See, page 3 of your
compulsory examination about point 10, when I say point 10 I mean if you
look down the left hand side you'll see numbers 5, 10, 15, 20, so about, at
20 about point 10, you were asked this question by Mr Grainger. "Okay, well
can you tell me what do you remember, if anything?" You said - I'm sorry,
I apologise. This is the interview conducted with you, I apologise.

THE COMMISSIONER: I think just to clarify that there was an interview,
wasn't there?

MR MADDEN: Yes, I apologise.

THE COMMISSIONER: And then subsequently there was a compulsory
30 examination?

MR MADDEN: Yes, I apologise - - -

THE COMMISSIONER: That's okay.

MR MADDEN: - - - Mr Walker. It was an interview conducted with you,
the last interview conducted with you. You said, "We'll lock the [REDACTED]
[REDACTED] thing as you spoke to me the other day". What was "the other
40 day"?---I believe it was the phone call advising that there was an interview.

Right. And who telephoned you?---I could not be sure, it was possibly Mr
Grainger or someone else, but they only introduced themselves as an ICAC
investigator.

And had you spoken to Mr Grainger before?---Negative.

And what did he say to you to the best of your recollection?---I don't
remember.

You don't remember?---He told me that the basis of, that I had to attend a compulsory hearing.

But this conversation where Mr Grainger rang you, you refer to it in your interview, not your compulsory examination, so it must have been before you attended to do your interview.---Yes, well that would be correct. He notified me of the interview by phone.

10 Right.---At that stage they did not have an email address for me.

Right. And did he say anything to you like, "Listen Terry, you're in real strife over this incident, you better come and tell us the truth"?---No, he did not.

Nothing like that?---No.

But you know you're in strife, Mr - - -

20 THE COMMISSIONER: What does that mean, Mr Madden?

MR MADDEN: You know you're in trouble over this incident, don't you? ---Yes, I've admitted that.

MR DUGGAN: I object to that question. Mr Walker gave evidence yesterday about the consequences that may flow from his evidence. They have, there are numerous consequences that may flow, being in strife may be with the law, it may be with other correctional officers, it may be in his general community and in my submission, these questions need to be asked
30 with a little bit more precision.

MR MADDEN: Well, I'll make them specific.

THE COMMISSIONER: Thank you.

MR MADDEN: Throughout this investigation, in fact from the day of the search of [REDACTED] cell, you have committed a number of criminal offences, haven't you?

40 MR DUGGAN: I object to that. Again - - -

MR MADDEN: Oh, here we go.

THE COMMISSIONER: I reject the question.

MR DUGGAN: Thank you.

MR MADDEN: Well, you assaulted [REDACTED] Yes, I did. I've admitted to that.

Right. You were interviewed by the ICAC – Corrective Services internal investigators and you lied to them?---Yes, I did.

Right. You lied when you were interviewed by Mr Grainger?---Yes, I did.

10 And you weren't completely truthful at the compulsory examination?

MR TAYLOR: Well, I object to that. He needs to put some specific allegation.

MR MADDEN: Well I'll leave that alone then. So you agree that you've committed a number of offences?---Yes, I've just told you that.

20 Right. And has ICAC promised you or held anything out to you that they'll help you if you're charged, if you come along here and give evidence?---No, they haven't.

Nothing at all?---Nothing at all.

Has anyone told you that you might be criminally charged?

MR TAYLOR: I object if my friend's looking to legal professional privilege in relation to - - -

30 MR MADDEN: Well, all right. Leaving aside your solicitor or any other legal advisor that you've spoken to, had anyone from ICAC told you that you might be criminally charged?---No.

And is it your expectation that you won't be criminally charged?---I have no expectations at the moment. I just came here to tell the truth.

All right. Well, you've given so many versions over the years, is everything that you've told yesterday in here the truth?---To the best of my recollection, everything I've told you is the truth.

40 Well, when you say to the best of your recollection, what does that mean? You're not sure? Are you leaving the gate open in case - - -?---I believe I have told the truth on everything I have been asked.

You see, would you agree that, "To the best of my recollection," is a bit of a, have you heard the expression, you know weasel words? It's a bit of - - -

THE COMMISSIONER: I reject the question.

MR MADDEN: Do you agree that the words, "To the best of my recollection," leaves the gate open in case you've made a mistake or you've told an untruth?---I have told the truth.

Have you? All right. Just tell me if I've got this sequence of events correct, will you? You go into this man's cell, and there's an incident in there where he gets injured, is that right?---Correct.

10 And then you say McMurtrie, if I've got it right – and if you can just understand, we've had a lot of material to try and read in the last couple of days, so if I make a mistake I'm not misleading you, believe me, I'm just trying to get my head around all this information – but as I understand it, you say McMurtrie tells you what to put in these initial reports that you've prepared. Is that right?---Correct.

And McMurtrie tells you to collude with Simon Graf and Elliott Duncan to create this falsehood?---Correct.

20 And then you sent those reports to, is it Mr Taylor or Mr Peebles?---I sent the initial report to Mr McMurtrie.

I'm sorry, Mr McMurtrie. I apologise. And then at some stage, it ends up with Mr Taylor and with Mr Peebles. Is that right?---Yes.

Is that right?---Yes.

And it ends up with them because when you say you go up to see Peebles, you take your report with you?---Yes.

30 And when you went up to see Peebles, did you go up by yourself or was anybody else with you?---Graf and Duncan were with me.

Are you sure about that?---Yes.

See, the computer you say Mr Peebles was using, I don't expect you'll be able to answer this, but do you know what he was doing on it? Do you know what he was typing or doing?---No, I don't.

40 Yes. So he was what they call offline that day, wasn't he?---Yes.

He was doing a special project in relation to staffing arrangements and trying to find another 123 beds for inmates, is that right?---I don't know.

You don't know about that, all right. He wasn't the manager of security that day, was he?---No.

Steve Taylor was?---Yes.

And you've seen, have you been shown an email where, I apologise, where Mr Peebles gets an email and he flicks it on to Steve and says, "Steve, I'm offline, can you look after those for me?" Have you seen that?---I saw it for the first time yesterday.

So as I understand your account, you say that – I withdraw that, sorry. The computer system, do you know what OMES, OMES is, is it, is it OME, the - - -?---OIMS.

10 OIMS, sorry. What does that stand for?---Offender Integrated Management System.

Right. And it's in that system where there's the incident report and the package for force of, use-of-force package. Is that right?---I believe so, yes.

Yeah. And you don't have to, if you're on a computer, I'll just put this to you. You, you've used computers at Corrective Services?---Yes.

Many times?---Yes.

20

Many, many times, meaning you use them to do reports, you use them for all sorts of things. You're pretty computer savvy?---No I'm not.

Well, you know how to fill a report out, a Corrective Services report. There's all manner of reports, isn't it?---There is, but I am not - - -

Right---? - - - very computer literate.

30 Righteo. Well, to get into the, if I can call it because I'm not very computer literate either, but if we can get into the, the program or the file where the, where OIMS is, you don't have to log out. If you're sitting at a computer, say, writing a report, you don't have to log out to get into OIMS, do you? ---I don't know. I couldn't tell you now.

You don't know. All right. So, as I understand your evidence, when you go to see Mr Peebles, you've got your fabricated report. Is that right?---Yes.

The one that you say McMurtrie's told you to fair?---Yeah.

40 Graf's got his.---Yes.

Duncan's got his.---Yes.

And you say that Mr Peebles then prepares this entire document for you. ---He did.

Everything?---He did.

Right. Didn't you say to him, "Listen Brad, this is all rubbish, what are we going to do about this?"?---No.

Because you didn't know, you didn't know if he had spoken to McMurtrie, do you?---I'm unaware of whether he spoke to McMurtrie.

10 No, that's right. Just tell us what you know, not what you suppose or believe or maybe. So, as far as you knew, when you went to see Peebles, he had no idea that what was in the reports that you'd taken up there was rubbish, was a fabrication?

THE COMMISSIONER: I reject that question.

MR MADDEN: Well what's the problem, Commissioner?

THE COMMISSIONER: The problem is that you are asking him or putting to him that Mr Peebles didn't know. How does he know?

20 MR MADDEN: Well, did Peebles say anything to you to say look, I know this isn't true?

MR DUGGAN: I object.

MR MADDEN: Oh, for goodness sake.

THE COMMISSIONER: I beg your pardon?

30 MR DUGGAN: I object, and my objection is this, what isn't true? My friend is asking a lot of questions which refer to "it" and a report. There are different reports, there's a witness report, there's an IRM entry, there are various things which are true and not true in those documents, and if my friend wants to put a proposition to this witness, I submit that he needs to do it with more precision.

THE COMMISSIONER: I agree.

MR MADDEN: The witness report that you prepared, you didn't say to Peebles, "This is not true", did you?---I can't recall the exact words.

40 What do you mean you can't recall? If you took a report up to a senior officer and it was untrue, you'd remember whether you told him it was untrue or not?---It was my opinion at the time, he knew what had been written.

Why? What do you base that opinion on?---I believed at the time that Mr McMurtrie had forwarded it to him electronically.

Well so what if McMurtrie forwarded it to him electronically, all he's got is the report.---The comment was made at the time, "This is going to come back, I believe this is going to come back and bite us on the arse."

You said a few minutes ago that as far as you were aware, you didn't know if Peebles, I'm sure I'll be corrected if I'm wrong, but you didn't know if Peebles and McMurtrie had discussed what was in the reports. That's right, isn't it? You said that a few minutes ago.---Well, I wasn't present.

10 That's right, you weren't present. So just confine your answers to what you know, will you, please.

THE COMMISSIONER: I thought he was, Mr Madden. I thought he said that Mr Peebles said, "This might come back and bite us on the arse." But he was telling you what he says he knows.

MR MADDEN: Right. You see, let me just suggest this to you, Mr Walker. If, and I say if, Mr Peebles helped you with that report, all he did was type out, re-word what you had given him and what Graf had given him
20 and what Elliott Duncan had given him from your false reports.---That would be correct.

That would be correct. And you have agreed that Mr Peebles did not know, to your knowledge, just asking you what you know, Mr Peebles to your knowledge did not know that those reports were false.---Correct.

Thank you. And by the way, Mr Peebles didn't ever say, "This will come back to bite us on the arse," did he?---He did.

30 Did he? Can I just have a moment, Commissioner?

THE COMMISSIONER: Of course.

MR MADDEN: The IRM, sorry, the IMR, is it? I've got it mixed up, haven't I, I think?

THE COMMISSIONER: Do you want that on the screen, Mr Madden?

MR MADDEN: It's all right. The description of the event essentially
40 reflects what's in your report. Is that right? Just that the wording's changed around a bit?---Yes.

Yeah. I'm sorry, I hope I'm not infecting everyone. I did follow your direction faithfully last night, Commissioner, and read all the stuff that was put up late on the web, but I've just got a bit to try and get through here.

THE COMMISSIONER: That's okay. Take your time.

MR MADDEN: And to your knowledge, Mr Walker, to what you know, there was no phone call made by McMurtrie to Peebles before you went up to see Peebles. Is that right?---Well, that would be correct.

Yeah. What do you understand, and again I'm only asking you what you understand, is a use of force with an inmate?---(No Audible Reply)

Well, perhaps I can give you some examples. If you went into a cell and an inmate clocked you on the nose and you got involved in a donnybrook, that would be a use of force. Is that right?---Yes, it would be.

Or if you had to do a cell extraction for a particularly violent inmate and you had to get kitted up and go in and grab him and drag him out, that would be a use of force. Is that right?---Yes.

Of course it would. Why do you hesitate?---I'm just thinking of the context you put it in.

Well, you've done plenty of cell extractions, haven't you?---Yes.

Of people that don't want to come out of the cell?---Yes.

And you get kitted up and if need be, you, I don't want to use prison parlance, but if you spray them or, what's the expression you would use? Gas them or something like that, if you have to do that, that's a use of force?---Yes it is.

And if you enter a cell and you were talking to an inmate or you saw an inmate and – I'm just giving you this as an example, but you may have actually seen this happen – if a prisoner went to throw something down his throat or went over to grab hold of something that he didn't want you to find, has that ever happened in cases where you've been in cells searching? ---Could assume so.

Yes. And you grab hold of the prisoner's arm and stop him doing whatever he's doing. That's not use of force, is it?---It would depend on the situation.

Well, look, a use of force is when you go into a cell with the intention of using force on a prisoner if need be.---Yes.

If something happens in the cell where, well, can I ask you this, if you had examples where you've had to grab a prisoner's arm because you've thought he was going to try and put some drugs down his throat or talk hold of something, some contraband. Have you had examples like that?---Yes.

And that's not use of force is it? In terms of the use-of-force package?---I'd have to read the package clearly to define that now. I haven't worked there for a while.

Well, let me suggest to you that, it's not a use of force. Do you agree or disagree?---Are you telling me it is or - - -

I'm asking you. I'm asking you. I'm asking you, do you agree that if you take a prisoner by the arm and lead him out of the cell or you grab hold of his arm gently because he's trying to put something down his throat, it's not a use of force?---It's an escorted move.

10 Or if a prisoner falls over in the cell and injures himself during a search, that's not a use of force, is it?---Not if no one has come into contact with the inmate, no.

But if someone has come into contact with the inmate to try and, I withdraw that. If someone's come into contact with the inmate to take hold of him before he puts some drug down a toilet and the inmate slips over and hits the toilet bowl, that's not a use of force, is it?---Well, I believe it is. If you've come in contact with him and then he falls, yes. I would believe it is.

20 Would you?---Yes.

You see, let me suggest to you that, all right, you believe that's a use of force. Where's the force?---By coming into contact.

But you said if you escort someone out of a cell, that's not a use of force. ---If it's a controlled move.

30 So if you try and stop a prisoner falling over, falling on to a toilet and you grab him to protect him, you say that's a use of force?---Are you talking about grabbing him and protecting him or grabbing him to stop him from placing something into the toilet?

The first scenario. You're grabbing him to stop him falling. That's not a use of force, is it?---No, it would not be.

And if you're grabbing him to put something down the toilet, that's not a use of force, is it?---I believe it is.

40 You believe it is. All right. After your involvement with [REDACTED] can I just ask you this, when, when was, when was the last time you saw [REDACTED] at that, that, after the incident in the cell?---When the other officers removed him from the cell.

Right. So they took him out. Where did they take him?---When I came out of the cell, he had been secured in a cell opposite.

Right. And were there officers in that cell with him? I assume there were, but you'll at least have to help me there.---I believe the door was secured when I came out.

So the door was locked?---I believe so.

Right. When I say locked I mean it may not have had a padlock on it, but they still have those slide things go across, no?---No.

- 10 They're two aren't there, the - - - ?---No, they're a normal, well they're actually a slam lock on those doors, you can just slam.

Slam. Okey doke. Mr Walker, there's the material that we've been given that indicates that you, you had some, some personal problems over the years. When you were at Lithgow, you were having those problems then, weren't you? And I don't want to, look, believe me, I don't want to embarrass you and I don't want to elaborate but you were having some health problems.---Yes, I have.

- 20 Right. And at some stage your duties were changed, you were taken off the team and put into the control room. Is that right?---Yes.

Yeah. Because you were prone to getting angry at the drop of a hat. Is that right?---Yeah, I had some issues at the time, mental health issues.

Yeah. You used to get angry with prisoners. Is that right?---Sometimes.

Yeah. You used to abuse them. Is that right?---Quite possibly.

- 30 Let me suggest this to you, that at no time did Mr Peebles ever ask you to go and "sort out" any prisoners. That's the truth, isn't it?---I have been sent to sort out prisoners.

Not by Peebles.---I believe I have been.

Mr Walker, your state of health at the time, if in fact there was a policy of sending officers to "sort out" prisoners, can I suggest to you, you'd be the last person that would be asked to go and do it, because you were a, you were a loose cannon, weren't you?---You may describe it that way.

40

It's a good way of describing it, is it not?---It's your description.

Well do you agree or not? Time is ticking away. Can you - - - ?---Yeah.

Sorry?---Sorry.

I said to you, you were a loose cannon and you said, "Well that's your description", and I said something like, "Well that's a good way of describing it, is it not?"?---No, I don't believe so.

Well you had to be taken off team duties because of your behaviour, put in the control room. That's right, isn't it?---Yeah.

Yeah.

10 MR GREENHILL: Did he answer that question, Your Honour?

THE COMMISSIONER: Yes, he did.

MR MADDEN: I think he did.

THE COMMISSIONER: I think he agreed.

MR MADDEN: Thank you, Mr Walker. We'll take a straw poll.

20 You didn't have any discussion with Mr Peebles before you went up to see him with the reports. Is that right?---Correct.

So it's not true to say that he directed you or, to your knowledge, directed anyone to only get three reports.---I was directed to get reports for those to go up there.

Listen to the question and just please focus on it. It's not true to say that Mr Peebles directed you, told you, requested you, whatever, to only get three reports.---Well he directed me to get reports from the team.

30 You didn't speak to him before you went and saw him afterwards.---I was told to do those reports, so that would've been at some point previous to that, because I was - - -

Told by who?

THE COMMISSIONER: Can the witness just finish please?

40 MR MADDEN: Sorry, I thought he had. I'm sorry. Told by who?---I don't recall.

No. So it wasn't Peebles. You see - - -

MR DUGGAN: Is that question pressed?

THE COMMISSIONER: I don't know.

MR DUGGAN: I object to it if it is.

MR MADDEN: Well, no answer.

MR DUGGAN: Well he says he doesn't recall and then it's put to him that it's not Peebles. It means he doesn't recall.

MR MADDEN: All right. Well, a few seconds ago you said Peebles directed you to get three reports. Now you're saying you don't know who told you.

10

THE COMMISSIONER: I'm not sure he did say that.

MR MADDEN: Well I think he did, I stand to be corrected. I apologise if I'm misleading him. Anyway, the bottom line is if you were told just to get three reports, you can't say that came from Peebles. Correct?---Correct.

Thank you. What's the, in your, when you gave evidence before Commissioner Hall on 9 March, you spoke about some handwritten reports. Do you recall that?---No.

20

Well, can I just read this to you? Page 51, you said - - -

THE COMMISSIONER: This is at the compulsory examination, is it?

MR MADDEN: Yes, Commissioner. Yes.

MR TAYLOR: The compulsory examinations start at 500.

MR DUGGAN: Yes.

30

MR MADDEN: Sorry?

MR TAYLOR: The compulsory examinations start at 500.

MR MADDEN: I'm sorry, 511. I'm sorry, 511. Commissioner Hall asked you this question at about line 28. "Just one thing, when, when you said the three of you went in there, did you have a report of your own at that time or not?" And you said, "Yes, there was a handwritten report." What's that about?---The handwritten report would've been the report I wrote and when I called it handwritten, that would be the hard copy that I actually physically signed. It would be a computer generated report that I had signed.

40

So when you say, again, I don't want to mislead you but when you say "handwritten" you mean typed?---Yes, typed. That's correct.

Right.---Handwritten, I've referred to it as of that because I signed the document.

Righto, thank you. And if Mr Peebles assisted you to prepare that report when you went up to see him, he didn't make any suggestion to you about what should go in the report that he was typing, did he?---(No Audible Reply)

He just went off the documents that you'd taken up?---That's correct.

10 Yes. Mr Walker, let me make it quite clear to you that Mr Peebles on the day in question did not tell you to go and sort it out. Do you agree with that?---That's correct.

Mr Peebles did not fabricate any report that, in relation to the incident. Do you agree with that?---He was present there when the direction was given.

What direction?---To go and sort it out.

Where was this direction, this is the direction by Mr O'Shea?---The direction that was given down in the unit. So he would be aware.

20 Well, let's just go back to the question I asked you, the last one. Mr Peebles did not fabricate any report?---No.

No. And to your knowledge, to your knowledge, Mr Peebles was not a party to any cover-up over what happened. That's the truth, isn't it? ---No.

It's not the truth?---He stated, "This is going to come back to bite us on the arse."

30 Well, look, even if he did state that, even if he did state that, that's not covering something up. Even if he did state that, it's a fact, as we've seen. ---Correct.

Right. I'll ask you again. To your knowledge Mr Peebles was not a party to any covering-up of what happened?---He knew, I believe he knew the reports were fabricated because he had had it conveyed from Mr McMurtrie at the time.

40 You've said here many times that he didn't know that the reports were fabricated. Can't you remember your evidence of what, 15 minutes ago? You've said more than once that Peebles did not know the contents of the reports were fabricated.

THE COMMISSIONER: Well, I think I rejected that question because it's unfair, I mean how does he - - -

MR MADDEN: To his knowledge. To your knowledge, Peebles did not know that the contents of the reports were fabricated. You've answered that question yes a number of times.---I believe he did.

Sorry?---I believe he did.

And what, you've changed your position in what, 10 minutes, have you?

10 THE COMMISSIONER: That's not correct, Mr Madden. The witness made clear that he based his opinion on the fact that your client, so he says, said, "This is going to come back and bite us on the arse." Now, you'd know and I'd know that underlying that is an assumption that something was wrong.

MR MADDEN: Well, with respect, I don't agree with that, Commissioner. That may be your interpretation of it but I don't - - -

THE COMMISSIONER: What's yours?

20 MR MADDEN: Sorry?

THE COMMISSIONER: What's yours?

MR MADDEN: It could be anything.

THE COMMISSIONER: Thank you.

30 MR MADDEN: Anyway, Mr Walker, let's just get this one thing clear, to your knowledge – what you knew, not what you thought or suspected or assumed – Mr Peebles did not know that those reports were false?

THE COMMISSIONER: I reject the question.

MR MADDEN: Commissioner, I press it.

THE COMMISSIONER: I reject it.

MR MADDEN: Well, on what basis?

40 THE COMMISSIONER: How can he say what Mr Peebles did or didn't know?

MR MADDEN: I'm saying to his knowledge, to his knowledge.

THE COMMISSIONER: You didn't say to his knowledge.

MR MADDEN: Yes, I did. I did. I made it perfectly clear, Commissioner.

THE COMMISSIONER: Well, make it clear again.

MR MADDEN: Thank you. You knew what I was asking you. To your knowledge, what you knew, I said to you what you knew, not what someone else might have told you, what you assumed, but to your factual knowledge, and you've agreed, you've answered this question, "Yes." You did not know that Mr Peebles knew that those reports were false?---As I've said, I believe he did know they were false.

10 What do you base that belief on?---On the statement that he made quite clear to me on the day, "This is going to come back and bite us on the arse."

Oh, I see.---And it was in relation to that incident.

He didn't say to you, "This is going to come back to bite us on the arse, so we've got to fabricate this report and send it up the line"?---No. I never made that statement.

20 No. He didn't make that statement.---He made the statement, "This is going to come back and bit us on the arse."

But he didn't make the statement, "This is going to bite us on the arse, so we've got to prepare false reports and bodgie everything up to protect everyone," did he?---Not in the full context of what you've just said, no.

Not in any context. Can I have one second to speak to my client?

THE COMMISSIONER: Of course you can.

30 MR MADDEN: Thank you.

MS FISHBURN: Commissioner, I don't think the witness answered the previous question, just to clarify. But in any case, I think it should be rejected because it's contrary to evidence that the witness has clearly already given.

THE COMMISSIONER: You have you explain that a little bit further to me.

40 MS FISHBURN: The previous question didn't appear to be answered and I take the opportunity in light of that to reject it.

THE COMMISSIONER: I'm still not with you quite. It's probably me not you.

MS FISHBURN: Based on my observations, the witness did not provide a verbal answer to the last question.

THE COMMISSIONER: All right. Well, can you remember, Mr Madden what the last was?

MR MADDEN: Probably not. I think, I think the last question was Mr Peebles didn't say anything to you when he was preparing, when you say, he was preparing this report and I say, if he was preparing this report. And he didn't say anything to you like, "This is going to come back to bite us on the arse, therefore we've got to fabricate these false reports to send them up the line to smother what happened," or anything like that?---As I said
10 before, he stated, "We have to fix this up. This is going to come back and bite us on the arse."

Can I just have a question with my, a second with my client?

THE COMMISSIONER: Before you do, Mr Madden, I mean you're very familiar with the procedure down here and the fact that there are standard directions and the ruling on Browne and Dunn doesn't apply but the Commission has made clear in paragraph 7 that there's an expectation that
20 where it is to be advised to reject or not accept the evidence of a witness on a material fact or issue on the ground the witness deliberately gave false evidence, the evidence is unreliable to the witness has made a mistake on a significant issue, the material ground of such contention must be out to the witness to allow the witness an opportunity to offer an explanation. I'm not being critical, but I don't quite understand yet, whether Mr Peebles is going to say, that the conversation that, "This is going to come back and bite us on the arse," was to was not said.

MR MADDEN: That's what I - - -

30 THE COMMISSIONER: O.K. Thank you. Do you want me to take the morning adjournment a little early, would that - - -

MR MADDEN: No, just – Mr Walker, I'm not going to pursue that with you. Mr Walker, you, you gave a lot of evidence yesterday about being put on the dog, so as to speak. And you've used that expression, so, so I'll use it. You've dealt with a lot of people over the years, a lot of inmates who are in protection because they've informed on other people. Is that right?---(No Audible Reply)

40 And you'd be, can I suggest to you, familiar with the – I withdraw that. You see, one thing that, I won't use the term dog. One thing that, that informants do or people who have rolled or people who have told lies for years as you have, you've told lies for years about this incident, haven't you?---Yes.

And then a, suddenly come forward and they say they're telling the truth and that's your position. You say you're telling the truth now. They do it to - - -

THE COMMISSIONER: You'll have to answer, Mr Walker.---Sorry. Yes, I do. Sorry.

MR MADDEN: They do it to save their own necks so as to speak, don't they?---They may.

Well you are. You, you're here to save yourself, aren't you?

10 THE COMMISSIONER: From what?

MR MADDEN: From prosecution.---I've been, have had no indemnity or anything said to me to save me from prosecution.

Mr Walker, you've worked in the prison system for, well you did for many years. You've seen inmates come into the system, you've looked at the offences they've committed, you've looked at the penalties they've received, haven't you? It's, it's, it's all on their files.---I agree it's on their files. I never used to look into their files greatly, no.

20

But you know that if you're prosecuted for the lies you've told, and for your conduct with [REDACTED] if you're prosecuted, there's a very good chance you'll go to gaol?

THE COMMISSIONER: I object to that. Where is this going?

MR MADDEN: Where is it going? I'm asking him a question.

THE COMMISSIONER: Well I reject it, ask another one.

30

MR MADDEN: Well, I don't know why, Commissioner.

THE COMMISSIONER: I reject it, ask another one.

MR MADDEN: All right. Well, you see, what you've done is what you would know other informants do, other people who have rolled do, to give yourself a bit of credibility you throw somebody under the bus who has done nothing wrong. You know what I mean by that, don't you?

40 MS FISHBURN: I object to this question, Commissioner.

THE COMMISSIONER: Yes.

MS FISHBURN: It's very vague and it's, it's very - - -

THE COMMISSIONER: Sorry, who does my friend appear for?

MS FISHBURN: I'm appearing for Mr Duncan as I announced yesterday in my appearance.

THE COMMISSIONER: Yes, you did.

MS FISHBURN: I don't follow the question and I don't think the witness should answer it.

10

THE COMMISSIONER: Say it again?

MS FISHBURN: I don't follow the question myself and I, I can't see how the witness could answer it.

THE COMMISSIONER: One of the problems I have, Mr Madden, is that you're making generalisations that all informants do things a certain way and as you know, and I know, and probably everybody else in this room knows, that's just not right.

20

MR MADDEN: All right, I'll withdraw that. You implicated Mr Peebles in wrongdoing to try and give yourself some more credit, haven't you?---That is incorrect.

He did nothing wrong in relation to this incident with [REDACTED] did he?---As I go back to my original statement, he said, "This is going to come back to bite us on the arse."

Oh, yeah. Yes, thank you, Commissioner.

30

THE COMMISSIONER: Thank you, Mr Madden. Mr Willis, I'm going to ask you to go next. Would it be preferable that we took the morning adjournment now before you do, or are you happy to start?

MR WILLIS: I doubt that I, I think I've probably got more than seven minutes but probably not much more, Commissioner.

THE COMMISSIONER: Good on you. Okay.

40

MR WILLIS: But possibly if we take the adjournment now.

THE COMMISSIONER: Okay. Well, we'll do that.

SHORT ADJOURNMENT

[11.25am]

THE COMMISSIONER: Mr Willis, are you ready to go?

MR WILLIS: Yes, Commissioner.

THE COMMISSIONER: We should make clear to the witness, too, that Mr Willis appears for Mr O'Shea.

MR WILLIS: Thank you, Commissioner. Mr Walker, on 19 February, I think you may have already said in your evidence, and that's 2014 by the way, you may have already seen your evidence but that part of the gaol at
10 Lithgow at least was in lockdown, wasn't it?---That's correct.

And as part of that lockdown, there were searches being conducted of various cells, weren't there?---3 Unit.

In 3 Unit. And on that day, on 19 February and possibly a week leading up to that, there'd been quite a bit of unrest in that part of the gaol, hadn't there?---That's correct.

And by that part of the gaol specifically, I mean that unit where cell 208 was
20 located.---No, I was referring to 3 Unit.

3 Unit, I understand. So do you not agree that there was unrest in Unit 2, I'm sorry, Unit 2 or Unit 5, which was it?---No. I believe the major unrest in the gaol at that stage was 3 Unit.

3 Unit, all right. In any event, you were called to go to another unit where cell 208 was, and what unit was that?---5.1.1.

Right. And when you arrived there, it was, what I'm suggesting to you is
30 that it was quite noisy there.---I don't believe so.

Okay. Did you hear a lot of noise being made by prisoners in various cells or perhaps only in one cell in that unit when you arrived there?---I could not recall, but the inmates have to yell to converse with each other across the doorways when they do it.

Right. What I'm suggesting to you, this was more than simply the inmates trying to converse with one another and there was noise being made by for example inmates apparently kicking doors.---Not when I entered the cell,
40 cell area, no.

Okay. In your experience is that something that happens, that they kick doors to just make a general noise?---Yes, that is.

Okay. And apart from shouting out to communicate with other inmates, do they sometimes shout out about things that they want or about their complaints or sometimes abuse at staff?---That is the nature of that unit, yes.

All right. And when you went to Unit 5 and you spoke to whoever you initially spoke to there, you were directed to unit, sorry, to cell 208 because there was an amount of noise being made by the inmates in there, weren't you?---No, that was not the reason I was given.

All right. So you say that the reason that you were given was because one of the inmates in that cell at least had abused the general manager. Is that right?---That was what I was told.

10 All right. And what you were told to do, as I understand it, was to "sort it out." Is that right?---Correct.

Right. And you may have noted that rather than – what I put to you, Mr Walker, was that rather than sort him out, it was "Sort it out," that you were told.---I don't understand your question.

Okay. All right. Well, what I was attempting to do was make an emphasis on the word, "It." So you were told to sort "it" out rather than anyone in particular.---We were sent to the sell to sort it out - - -

20

Yeah, okay.--- - - - as he had abused the general manager over the intercom system.

And by sorting it out, what I'm suggesting to you is that it was to sort out the problem, whatever the problem was, with those inmates.---That's incorrect.

Okay. In any event, you went to the cell and you've told the Commissioner what happened when you went into the cell and you say that's what, the
30 evidence that you gave about that yesterday was the truth. Is that right?
---Yes.

And you gave evidence at a compulsory examination in this Commissioner on 9 March of this year and you've been taken to some of that already.
---Yes.

And was what you told the Commission on that day the truth?---Yes.

40 What that, do you say that that's the first time that you've told the truth about what happened in that cell on the day?---When I was summoned to the Commission for that hearing I was advised by my legal representatives to tell the truth.

Yes.---So that is what I've done since.

Okay. I just want to take you to some evidence that you gave there in relation to what you saw when you came out of the cell. Perhaps can I just

ask you, as I understand your evidence you took some time to compose yourself in the cell. Is that right?---Yes.

And then when you came out, who did you see in the day room?---The other officers that were present, Watson and the Dog Unit operator and the only other two I can recall were the IAT staff.

Right. Well, specifically you didn't see Mr O'Shea in the day room?---No, I did not.

10

And do I take it that once you were asked to go to cell 208, and I think you said that you immediately started to walk to cell 208 after you were given that direction. Is that right?---Yes.

And I take it that from that point of time, your attention would've been focused upon cell 208 and the people inside it. Is that fair?---Correct.

And so you have, I'm sorry, I withdraw that. You don't know of your own knowledge whether Mr O'Shea left the day room, I'm sorry, left the office after you turned to go to cell 208, or what - - - ?---No, I don't.

20

Okay. Can I just ask you about this, Mr Walker? When you gave evidence here on the last occasion, on 9 March, and this is at page 533, I don't want to take you to the detail of it, and this is at, commencing at line 40 but on that occasion, Mr Walker, you told the Commission that your recollection of what had happened is poor because of your health history. Is that right? ---That's what I said, yep.

And you went into some detail which I'm not going to repeat to you about incidents that had occurred in relation to your health. Is that right?---Yes.

30

And the point in you giving that evidence was to inform the Commission that at least in your mind, those issues in relation to your health had impacted upon your recollection of what happened four years ago.---That could be correct.

Well why else would you have said it?---I don't know at the time.

Okay. You mentioned yesterday something that you referred to as "cell therapy". Do you remember that?---Yes.

40

And on the last occasion that you were here, for the purpose of everyone else I'm going to page 536 of the transcript of 9 March, you talked about "cell therapy" and what that involved. Do you recall giving that evidence? ---Yes, I do.

And could I take you then to 536.2? You've got it in front of you, I see. ---Yeah.

And you were asked a question, "Why was this time different? Why was Mr [REDACTED] assaulted and the cell wasn't?" And you said, "Well he lunged towards me and that's when I palm struck him, then it evolved from there."?---Yes.

10 "It turned from what would've been 'go down and yell at them', I've had plenty of them, you know, you'd yell at them and carry on, you know?" And I won't read it all, but you can read that answer and it goes on, and you've described in there, have you, what was mostly involved in cell therapy.---Yes.

Right. And then in answer to the Commissioner commencing at around line 20, you were asked the question, "What were you going to do with [REDACTED] about the abuse?" And you say, "Oh, I was probably going to rev him up at the time and I was just going to yell at both of them, basically to start with, and then just tear the cell apart."?---Yes.

20 Right. And then you go on to say in the next, in answer to the next question, "He lunged towards me and I struck out." And do you agree with that, do you see that?---Yeah.

And is that what happened on this occasion?---Yes.

That you were going down there to yell at them? To, to - - - ?---I never went there with the intentions to assault the inmate, I went down there with the intentions to, as I say, give him a good rev up and then go on from there.

30 All right. And it deteriorated from that into what you say happened because Mr [REDACTED] response to you was aggressive, wasn't it?---Yes, it was.

And you responded to him in an aggressive way yourself.---I did.

In relation to the signing of the reports, you were shown a report yesterday and in relation to signing of reports, I think the report you were shown was addressed to "sir". Do you recall that?

40 THE COMMISSIONER: Perhaps it can be put on the screen.---Yeah, I haven't - - -

Do you have any objection to it being put on the screen?

MR WILLIS: No, no, not at all. Thank you, Commissioner.

THE COMMISSIONER: I'm unsure of the exhibit number.

MR WILLIS: Yes, it's all right, I'm not sure myself. Well I think, can I attempt to do it this way, Commissioner? Mr Walker, is it the case that as a

Corrective Services officer, and I see you've got a document on the screen in front of you but I don't think that's the one I was referring to, but is it the case that in any report that you would submit as a Corrective Services officer, it would be directed to the general manager of the gaol?---Yes.

Is that right? And that was a matter of practice, rather than directing it to the general manager personally, wasn't it?---That is correct.

10 Okay. And you told the Commission yesterday, and on the last occasion, about Mr O'Shea telling you words to the effect of "Just stick with your story". Do you recall that evidence that you gave?---Yes.

You went to see Mr O'Shea before you were interviewed by the Departmental Investigators in 2015, didn't you?---I believe so.

Do you remember that or not?---Not clearly.

20 Okay. Do you recall Mr O'Shea being supported by you and trying to assist you to get through the process?---Yes.

And do you remember being quite emotional and upset about it yourself?---I was, I had a lot on my plate at the time.

Yeah. And, see what I suggest to you is that what Mr O'Shea said to you was simply by way of support and not encouragement to be untruthful?---I couldn't answer that.

30 All right. Well in any event, all he said to you was, "Well just stick with your report", didn't he?---Yes.

Okay.---Or to that effect.

Yes. Nothing further, thank you.

THE COMMISSIONER: Thank you, Mr Willis.

MR DUNNE: Yes, thank you, Commissioner.

40 Mr Walker, my name is Dunne and I represent Mr McMurtrie. Do you agree that your first involvement with Mr McMurtrie in relation to your entering the cell and what followed with Mr ██████ occurred in a telephone conversation sometime around midday on the 19th?---That would be correct.

The first time was after the events had taken place in the cell. Is that right? ---Correct.

Now, just excuse me. And that contact was initiated by a telephone call by you to Mr McMurtrie. Is that correct?---I couldn't be sure but I believe so.

I think that's the evidence that you gave yesterday.---Yeah.

Just excuse me. Yes, yesterday at T43 at about point 11 you answer – the following exchange occurs between you and the Commissioner. “What did he say to him?” “What did he, McMurtrie, say to you, do you recall?” And you say, “I can't tell you exactly what he said,” that's what Mr McMurtrie said, “But I just said, ‘I want to run this by you,’ I believe, or something like that.” “I sent it,” which was your draft statement,” - - -?---Yes.

10

- - -“To him and I said, ‘How does that look?’ And then it was, yeah, that's okay, and that was it.” All right.---Correct.

Now, you subsequently give evidence that Mr McMurtrie colluded with Mr Peebles or was – is that right?---That's correct.

And the substance of your other evidence given yesterday, if I can summarise it, is that Mr McMurtrie was in fact the author of that report which was previously shown to you in answer to questions from my friend.

20

THE COMMISSIONER: Did the evidence go that far? I'm just - - -

MR DUNNE: Your Honour, well, Your Honour, the evidence goes in fact to that fact that the witness was directed by Mr McMurtrie to tell other witnesses to include that in their statements.

THE COMMISSIONER: Certainly.

MR DUNNE: I'm just laying the basis of the - - -

30

THE COMMISSIONER: Okay. You go ahead.

MR DUNNE: I'm sorry, do you need me to repeat my question?---Yes, please.

All right. Perhaps I'll do it this way. I simply want to suggest to you, and so this is a question where you either agree or disagree, that in fact what happened, and all that happened in your interchange with Mr McMurtrie is what is answered in that question that I just read to you, which is you prepared a draft firstly. Do you agree with that?---That I wrote my draft, yes.

40

I'm sorry?---Yes.

And you wrote that draft without any input from Mr McMurtrie?---I wrote that draft after a phone call to him.

Right. I'm suggesting to you that you prepared that draft before you had the conversation with Mr McMurtrie. Do you agree or disagree with that?
---Couldn't tell you.

Did you understand my question?---(No Audible Reply)

10 I'll ask that again. What I'm saying to you is, and I want you to agree or disagree, what I'm saying to you is that you in fact prepared that report, not completely, but you prepared that report before you had the conversation with Mr McMurtrie.

MR DUGGAN: I object, and it's really a matter of clarification. The actual report hasn't been identified. There's a question as to whether it's his witness statement or the IRM report and perhaps the document might be shown to him or clarified so that there's no doubt.

MR DUNNE: Yes. I think it's in the - - -

20 THE COMMISSIONER: Mr Dunne, have you got any objection to the document being put on the screen?

MR DUNNE: Definitely not, Your Honour. No. I think it's in the, I think it's Exhibit 45 and it's one of the pages - - -

MR DUGGAN: It may be page 99 that my friend is referring to.

MR DUNNE: Yes, I'm grateful for my friend.

30 THE COMMISSIONER: Is that the one you're after?

MR DUNNE: That's, that's the one. Before you spoke to Mr McMurtrie, you had prepared a draft report. Is that correct?---Partially.

You partially completed a report, is that what you're saying? Is that correct?---Yes, I had started it.

40 You had started the report, and that's what you meant by "I'll run this by you". Is that right? When you spoke to Mr McMurtrie, "I want to run this by you"?---I started the report and then got advice off him as to what I should put in the rest of it.

Well - - - ?---We had a discussion and I wrote the report, I emailed it to him and then it was sent on.

I see.---Then it was completed.

And what I'm suggesting to you and which you either agree or disagree with is that your answer to the Commissioner yesterday, which is, "I sent it down to him", being the report.---Yeah.

"I said, 'How does that look?'" Your, your answer was, "Yeah, that's okay."?---Yes.

And that is the extent of the input of Mr McMurtrie into your - - - ?
---Negative.

10

MR DUGGAN: I object, and sorry I was just waiting for my friend to finish the question. The question doesn't state to my understanding the full evidence that was given about this yesterday. At transcript page 44 - - -

MR DUNNE: I've referred to all of that. In fact, I'm sorry, I won't interrupt my friend. I'm sorry.

MR DUGGAN: Thank you. At the bottom of page 44, Mr Walker gave evidence that he was told to write certain information in the report.

20

MR DUNNE: Yes, I agree with all that, I'm sorry if I've misled my friend or perhaps the witness. I'm not disputing that that evidence was given. What I'm in fact putting is that evidence is not correct and, in fact, the correct evidence is that there's a, is as is in point, well, point 10 on page 43.

MR DUGGAN: My submission is this. The transcript was put to Mr Walker at page 43 in a vacuum as if that was the only evidence and, in my submission, that might tend to mislead the witness and the full context should be given if he is to be asked about this, and that context includes what's at the bottom of page 44 from about lines 35, and - - -

30

MR DUNNE: I'll repeat it but I think in your transcript you'll find that I say that following that statement, he gave further evidence almost to the effect that Mr McMurtrie was the author of the document. I can remember the Commissioner in fact saying, "Did it go that far?"

MR DUGGAN: Well there's a question about whether someone is the author and also whether there's a conversation whether there are words about it, and - - -

40

THE COMMISSIONER: Yes. I am a little bit concerned.

MR DUNNE: I'm simply trying to establish a Browne and Dunn, Commissioner.

THE COMMISSIONER: I assume it's your client's position then that he didn't have any input into this report at all?

MR DUNNE: To the extent, to the extent that he said, "Yeah, okay", yes.

MR DUGGAN: Can I clarify that, Commissioner? Does that mean that what's at the bottom of page 44, particularly at lines, I think it's about 37 where Mr Walker gave evidence, "I believe Mr McMurtrie said, 'Put down bupe because he was going to write a report saying he had information received that would fix it'" - - -

THE COMMISSIONER: Yes.

10

MR DUGGAN: Does Mr McMurtrie deny that? That's what I'm unclear about.

MR DUNNE: My difficulty is Mr McMurtrie is not here.

THE COMMISSIONER: That's okay.

MR DUNNE: And I don't want to go, and although that is an understanding of mine, I do not want to go to that level.

20

THE COMMISSIONER: Well, my only concern, I mean, I share Mr Duggan's concern that things aren't quoted out of context. The evidence given yesterday was the effect that Mr McMurtrie had a role in that document and we all know what it was. You think you either, if you're worried about Browne and Dunn, to the extent it applies here, aren't you obliged to put to him that either he had no role or he had a role to a certain extent? And if you need instructions on it, why don't you move on and let that go, and when you've got instructions – say sometime between 1.00 and 2.00 – I suspect Mr Walker will still be here, then you do it then.

30

MR DUNNE: Thank you, Commissioner. Mr Walker, so you understand that my questioning in relation to the preparing of that report was going to be sort of out on hold at the moment and I'll move into another topic? Are you clear about that?---Yes.

I might take you to evidence you gave yesterday about evidence that you had given at the compulsory examination, where there was reference to an instruction or a direction given to you by Mr McMurtrie, to tell Mr Graf and Mr Duncan what to include in their reports.---Correct.

40

Now, I think, in fairness, the words instruction or direction were used by the solicitor acting for the ICAC who was asking you questions.

THE COMMISSIONER: Do we have a reference?

MR DUNNE: I'm sorry, yes, sir. If I can take you to 527. Sorry, page 527.

THE COMMISSIONER: And that's the examination that happened on 18 March?

MR DUNNE: On 9 March. And if I can take you to about point 28, "Thank you, I'll show you Mr Duncan's version." We then move down to point 37. "Was this a document that Mr Duncan drafted as part of the story between the three of you?" "That's correct. Partly on the direction of Mr McMurtrie." And you said, "Yes"?---(No Audible Reply)

10 I'm sorry, do you see that?---Yes.

I'm sorry, did you answer that question? I didn't hear an answer.---No, I was just reading.

I see, thank you. I'm sorry, have you finished reading that?---Yes.

I see. So do you understand that?

20 THE COMMISSIONER: Understand what, Mr Dunne?

MR DUNNE: You agree that you were asked the question by counsel assisting that you had spoken, in this case, to Mr Graf, on the direction and told him what to put in his report on the direction of Mr McMurtrie?
---Yeah, after a discussion with Mr McMurtrie. Yes.

30 Yes. After a discussion, but not at Mr McMurtrie's direction or instruction that Mr Graf or Mr Duncan include that in their report?---I was told to include in the reports that it was there as a drug search and to put buprenorphine in it.

In your report. In your report. Is that correct?---Yes, in the report.

Yes. But you were not instructed or directed by Mr McMurtrie to tell anybody else?---No, I wasn't.

40 Thank you. And so yesterday at paragraph 54, sorry page 54, at about point 41, when it says, "And how did Mr Graf know? If you were aware, how did Mr Graf know that the reason should be put in?" "I would've told him."
---Yes.

"Did you recall telling him?" "I told him what to write into it, yes, as per the instruction I received."?---Yes.

So you're talking about the instruction received from Mr McMurtrie.---Yes. That we were to put down in the reports that it was a drug search.

Yes, but you were only, your evidence though, isn't it, that you were only told by Mr McMurtrie to put that into your report?---Names were not clearly

given, but the reports were a collusion. I've stated that before. And they all had to come up to look factually the same to clean up what we thought was a terrible mess.

Yes, thank you. Mr McMurtrie did not tell you, did not direct you or instruct you to tell either Mr Graf or Mr Duncan what to put in their reports.---As I said, I was directed to put buprenorphine in the report.

10 Okay. I'll ask the question again. You were told to put – sorry, your evidence is you were told to put in your report that information by Mr McMurtrie. That's your evidence, isn't it?---Yes, and that was untrue.

Yes. That's your evidence, is that - - -?---Yes, but the reports were all being written at the same time.

20 Yes. You were told that, but Mr McMurtrie did not tell you, direct you or instruct you to tell Mr Graf and Mr Duncan what to put in their reports. ---The discussion was to make the reports match up so when they were submitted they would all be the same, leading to the IRM completion later
- - -

Right.--- - - - that the drugs were found.

Can you please listen to my question, okay, and please answer the question.

MR DUGGAN: Well, I object to that commentary because he did just answer the question.

30 THE COMMISSIONER: Yes, I agree.

MR DUGGAN: And there's an inference in the answer.

THE COMMISSIONER: I agree.

MR DUNNE: If you agree, Commissioner, I'll move on.

THE COMMISSIONER: Yes.

40 MR DUNNE: Now, I apologise because I haven't seen the transcript yesterday afternoon so I'm going to have to rely upon my notes on a couple of points of evidence you gave yesterday. Now, I think you were asked some questions about whether you had any, were you able to give evidence or any factual reason on Mr McMurtrie planting drugs in a search of the cell that occurred on the following day, 20 February. Do you recall being asked a question about that?---No, I don't, but I was not present on the next day.

And as I say, I apologise, I haven't got the transcript. Would you, you would agree, would you, with the evidence that you gave at the compulsory

examination on 9 March at page 540 when you were asked, at page, at point 30 where, “Did McMurtrie ever tell you that he planted drugs in Mr [REDACTED] cell?” “No, he didn’t tell me directly but” – in any event, you have no – do you recall saying that?---Yes.

And you had no evidence or factual basis for telling the Commission?
---Only the assumption that - - -

10 MR GREENHILL: I’m sorry Mr – I’ve got a new iPad and I pressed the wrong button, I’m sorry.

THE COMMISSIONER: It sounds like the Moscow Symphony Orchestra, is it?

MR GREENHILL: I’m trying to, trying to, trying to turn it off.

THE COMMISSIONER: Okay. Sounds wonderful.

20 MR GREENHILL: Sorry about that, everyone. I got a bad scowl from the right, Your Honour. I apologise.

THE COMMISSIONER: That’s all right. Let’s continue. We’re at 540 for the transcript.

MR DUNNE: Mr McMurtrie did not tell you that he planted drugs?---No.

And you have no factual basis - - -?---I have no factual, other than the assumption I made, we were told to put - - -

30 Thank you. Other than an assumption you have no factual evidence to give. Is that correct?---Correct.

Can I also take you to evidence that you gave yesterday in relation to the CCTV footage and the discussion that you had with Mr McMurtrie.---Yes.

Do you recall that evidence?---Yes.

40 And I understand that the words that Mr McMurtrie used to you a couple of days after the incident is the footage wasn’t there. Is that correct?---Yes.

And on the later occasion that the footage wouldn’t be there, is that right?
---That’s correct. Yeah.

And at no time did Mr McMurtrie say that he had deleted the footage, did he?---No.

And are you aware that this CCTV can’t be deleted?---No.

Are you aware that the only way that the CCTV footage ceases to exist is that it gets re-recorded over, a period of 10 to 14 days?---No, I wasn't aware.

MR DUGGAN: I object. I object to that question.

THE WITNESS: I'm not trained in - - -

10 THE COMMISSIONER: Just a moment, Mr Walker. We've got an objection, so - - -

MR DUGGAN: That must be on the assumption that it hasn't been downloaded.

20 THE COMMISSIONER: Correct. I accept that, yes. Are you saying, Mr Dunne, it can't be downloaded? The reason I ask that is that, as I understand it, the use-of-force package, so to speak, would require to be included CCTV footage and I've always assumed – and I may be wrong – but I've assumed that that occurs because those responsible for putting the package together download the relevant CCTV footage, cut it to a disc or a thumb drive and provide it. Is that your understanding, Mr Duggan, or - - -

MR DUNNE: In any event, Commissioner - - -

MR DUGGAN: That is my understanding, yes.

THE COMMISSIONER: Yes.

30 MR DUNNE: - - - I don't know that it's necessary for that evidence to come from this witness or that particular issue to be – I don't think it's necessary for that to be ventilated with this witness. Simply what I need to put to this witness is that Mr McMurtrie didn't use the word "deleted".

THE COMMISSIONER: All right. No, that's fine.

MR DUNNE: And as far as he went, as far as your evidence, Mr Walker, is is that Mr McMurtrie said the footage wasn't there or wouldn't be there, is that right?---Correct.

40 Thank you. Just bear with me. Commissioner, the remaining questions I have all flow in relation to the preparation of the investigation report.

THE COMMISSIONER: All right. That's a matter you need to get instructions on, is that right?

MR DUNNE: Yes. Yes.

THE COMMISSIONER: All right. Well, subject to that, you're finished?

MR DUNNE: Yes. Well, I understand.

THE COMMISSIONER: Thank you. Mr Greenhill, are you ready to proceed in relation to Mr Graf?

MR GREENHILL: Whenever it suits you.

10

THE COMMISSIONER: Well, let's get it started. Mr Greenhill appears for Simon Graf.

MR GREENHILL: Mr Walker, I want to ask you some questions to start with about your recollection, the power of recall. Do you understand?
---Yes, sir.

20

When you were interviewed on 9 August, 2017, in the record of interview with some officers, you were being truthful, weren't you, when you said you couldn't really clearly remember the events of 19 February, 2014?---Which interview are you talking about?

Well, it's the one on 9 August, which, just bear with me, was with Mr Paul Grainger and Mr Tim Fox from ICAC conducted at Lithgow Police Station. Do you recall being interviewed at Lithgow Police Station?---Yes, I do.

And you know Mr Grainger?---Yes, I do.

30

Which one is he? Is he present?---(not transcribable)

The one on the front here, all right. And is Mr Fox here now?---No.

And you recall being interviewed on that, in 2017 at Lithgow Police Station, correct?---Yes, I do.

And at page 2 of that interview, you tell the investigators that you couldn't really clearly remember the events of 19 February, 2014, didn't you?---As, yes. But as I made in my earlier - - -

40

No, no, no. Please.

THE COMMISSIONER: No. Can he finish his answer, please?

MR GREENHILL: Well, he answered it, with respect.

THE COMMISSIONER: I'd like him to finish his answer, Mr Greenhill.

THE WITNESS: As I made the statement, I lied in part of that initial interview. Since then, I have come to ICAC on the next compulsory interview and told the truth.

MR GREENHILL: That was self-serving, wasn't it, what you just said? Now, will you answer my question, my next one without adding unsolicited comments? Did you not say then that you did not remember a great deal, really?---If that's what's in the interview.

10

And that was truthful, wasn't it?---No. I've already told you the truth.

No, no, no. Please.

THE COMMISSIONER: Well, you can't ask him questions like that, Mr Greenhill and cut him off when he's trying to answer.

MR GREENHILL: Your Honour, he went on to say, Mr Commissioner, he went on to say, "But as I told you," you know? That's a comment, with respect. His answered my question and I accept his answer. And you went on to say, did you not, you couldn't remember the full events of the day, it was a long time ago?---I'd that's what's in the interview.

20

And you told those investigators, did you not, you couldn't even remember who was the manager of security.

MR DUGGAN: I object. This is not a memory test in terms of what he can remember he said on 9 August, 2017. If he's going to be asked specific questions about answers he gave on that day, then in fairness those questions should be put to him so that he can consider them in the context in which they appear.

30

THE COMMISSIONER: What do you say, Mr Greenhill?

MR GREENHILL: I'm seeking an admission that he couldn't remember, Your Honour, and that's what he said.

THE COMMISSIONER: Well, I don't think there's any doubt that he said it.

40

MR GREENHILL: All right. I'll withdraw that last question. Did you say on your oath on 9 March, 2018, at these premises before a judge, that you had a poor recollection of the events because of your mental health history? ---If that's in their interview.

Will you accept from me it's in interview?

THE COMMISSIONER: Are we talking about interview or - - -

MR GREENHILL: Examination, compulsory examination.

THE COMMISSIONER: The compulsory examination, yes.

MR GREENHILL: On oath.

THE COMMISSIONER: Thank you.

10 MR GREENHILL: Transcript page 533, line 41. Now, when you gave that evidence here under compulsion, you told the judge that your memory was poor. I'm going to ask you this, have you attempted to refresh your memory from anything since that date?---I don't understand your question.

Well, have you looked at any documents apart from what you saw on the screen yesterday?---No.

And, so you've not viewed anything to help your memory improve since you gave the evidence in the compulsory examination in March this year.
20 Correct?---That's correct.

And you'd agree with me, wouldn't you, that one's memory does not improve with age?---My memory is patchy and sketchy on some occasions.

Would you agree with me that one's memory doesn't improve with age?
---I'm not a memory specialist.

Will you answer my question, please?---I don't know how to answer that question.
30

It's common sense, isn't it?---My memory is patchy on some occasions.

Has it been patchy while you've been giving evidence in these proceedings both yesterday and today?---I've answered the questions to the best of my recall.

And is this the situation, that you're still having trouble recalling certain events about which are being asked?---I'm giving you the answers to the best I can to my memory.
40

And you were asked by Mr Madden a number of questions and you've told him that you have just come here to tell the truth.---That's correct.

But you haven't done that, have you?---Yes I have.

All right. And you told Mr Commissioner that you were told by your legal representatives to tell the truth.---I was.

Did you come here in the hope of seeking some indemnity against the institution of criminal proceedings against you?---I've answered that before, I have not been given any indemnity guarantees or anyone.

I didn't ask you that.

THE COMMISSIONER: In fairness to the witness, he has answered it before.

10 MR GREENHILL: But I didn't ask him whether he had been given any indemnity, Your Honour. I asked him whether he came here with the hope of getting one. A different question.

THE COMMISSIONER: Repeat the question.

MR GREENHILL: Did you come here with the hope of getting some indemnity from prosecution for a criminal offence you might have committed?---I came here just to tell the truth.

20 Did you come here to try and inflict revenge on fellow officers?---No.

I beg your pardon?---No.

Now, I don't want to go into details about the mental health problems you had, you've been asked questions by Mr Madden about that. Did you used to get angry with members of the staff out there at Lithgow?---I did have anger issues.

30 And you got angry with the staff, didn't you?---On occasions.

And when you did, the times that you performed cell therapy, were you effective in doing that?---Can you describe what you mean?

Were you successful in doing your cell therapy?

THE COMMISSIONER: Doing self-therapy, did you say?

MR GREENHILL: Cell therapy.

40 THE COMMISSIONER: I'm sorry.

MR GREENHILL: (not transcribable)

THE COMMISSIONER: I might need one too.

MR GREENHILL: Well, if you take your finger away from your ear. Were you successful in your cell therapy on those occasions when you carried it out?---I believe so.

And is this the position, Mr Walker, that when you gave evidence under compulsion on 9 March, 2018, you said that you admit that you shouldn't have been at work probably for a year before that, that is, before February 2014?---That's true.

Now, I'm not going to go through the details of it, but it was due to the grief you'd suffered through your depression. Correct?---(No Audible Reply)

10 That's what you said.---Well, I thought you weren't going through the details.

No, but I'm just finishing off what you actually said.---Yes.

It's through the grief you'd been through with your depression. Correct? ---Situational factors in my life at the time.

Yeah. Okay. And I just want to now go on and ask you some questions about Mr Duffy. Was he a friend of yours?---Work colleague.
20

A work colleague.---Yes.

You regarded him highly, didn't you?---I regarded all my staff members
- - -

No, no, please, him. You regarded him highly?---Yes.

You regarded him as being an honest man. True?---I do.

30 And when he put in his, a report, you never saw that report, did you?---No, I didn't.

You didn't know what he had said in any report to his superior officers.
---No, I didn't.

And you've now seen it, seen the report, correct?---Yes, correct.

But at the time when you prepared your report you hadn't seen Duffy's report. Correct?---Correct.
40

And you anticipated that any report he might prepare would be truthful - - -
?---Correct.

- - - as to what had happened in the cell?---Correct.

And that would be disadvantageous to your interests, if he told the truth.
---Yes.

Now, excuse me, Your Honour.

I want to take you to some evidence you gave here on 9 March, 2018 when you were compulsorily examined before the Chief Commissioner. At the bottom of page 537 you were asked this. "So Mr Duffy's version though doesn't scream to you as incorrect?" "No, it doesn't." Do you remember saying that?---Yes.

10 Question, "It could have occurred that way?" Answer, "Yeah, it, as I say, I just didn't realise he went in and when he – I do recall him saying, 'I've got a report,' I said, 'Oh, they've done it all, mate.'"---Yep.

"Because I didn't even know he'd gone to write one at the time."---That's correct.

And you then went on to say, and you said that before, "Do you remember when Mr Duffy came to you and said, 'I've got my report?'" Answer, "Yeah. And I just said to him, 'Well, Mr Peebles already dealt with it, mate.'"---That's - - -

20

"I said, 'It's all gone in.'" What that truthful?---Yeah, that's correct.

And you were then asked, "Did you at any time say to Mr Duffy, and I've asked you this before, but now that you've seen this, 'You don't need to do a report, you weren't there?'" And you said, "No. I said to him, well, I probably said he didn't need to do it, report, because I didn't believe he was in there."---That's correct.

30 And then you went on to say, "That would be the only reason."---Yeah, I didn't realise he was in the cell, I didn't realise he had entered the cell.

I'm interested in the words, "That would be the only reason." It's recorded there, Mr Walker.---Yeah.

And what you are saying there, the only reason that you didn't want the report because you didn't believe he was there.---Yeah, well, I didn't at the time.

40 But see, that answer there is untruthful, isn't it, saying that would be the only reason. Correct?---I don't know how to answer that.

Well answer it truthfully, please.---Yes.

So why did you lie before the Commission when you were on your oath then?---I didn't look at it in that context.

You see, you're advancing to the Commission, the Chief Commissioner on that day, that the only reason you didn't want Duffy's report was because you didn't believe he had been in the cell at all. Correct?---That's correct.

But in fact the reason you didn't want Duffy's report to go in was because you wanted to protect yourself, didn't you?---No. Mr Duffy's report reflects what happened inside the cell.

Yes, but you didn't know that at the time, did you?---No.

10

You didn't find out what was in Mr Duffy's report until some considerable time after this.---That's correct.

And you, excuse me. You, I had a note here somewhere. You, you, you didn't want Mr Duffy's report to be seen because you realised that being an honest man, he would more probably than not give a version of the events that was truthful. Correct?---Correct.

20

And you wanted to exclude Mr Duffy's report from consideration by your superior officers. Correct?---As I said, I did not realise Mr Duffy had gone to write a report at that time. We had attended the office with Mr Peebles and took our reports up.

You didn't want the superior officers to know anything of what Mr Duffy could say, did you?---I was not aware that Mr Duffy had written a report when we went up and handed our reports in.

30

Are you sure, is that a truthful answer?---Yeah. I didn't have a report from Mr Duffy at the time.

In fact, he offered it to you, didn't he?---I believe he offered it to me on the way back from being up there.

And you rejected it?---Yes, because we'd already done the paperwork, it had been sent in.

40

You rejected it, I suggest, because you were afraid that he might tell in his report a truthful version which would be damaging to you. Correct?
---Correct.

Would that be a suitable time?

THE COMMISSIONER: Yes. How much longer do you think you've got to go, Mr Greenhill?

MR GREENHILL: At least half an hour.

THE COMMISSIONER: All right. I'll adjourn.

LUNCHEON ADJOURNMENT

[12.58pm]